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No. 01-706

IN THE

Supreme Court of the United States

REX R. SPRIETSMA,
Administrator of the Estate of Jean Sprietsma,
Petitioner,

v.

MERCURY MARINE,
a Division of Brunswick Corporation,
Respondent.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF *AMICUS CURIAE* OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1. Whether federal common law, applied by state and federal courts adjudicating maritime claims, should be expanded to impose a duty to install "propeller guards," where Congress has committed that issue to a federal administrative agency and the agency has refused to require installation of propeller guards.

2. Alternatively, if state common law is applicable, whether a state law propeller guard claim arising from an accident on navigable waters of the United States is preempted by the Federal Boat Safety Act.

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BRIEF *AMICUS CURIAE* OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES IN SUPPORT OF RESPONDENT

The Maritime Law Association of the United States (the "MLA") respectfully files this brief *amicus curiae* in support of Respondent, Mercury Marine, a Division of Brunswick Corporation ("Respondent"), and asks this Court to affirm the decision of the Supreme Court of Illinois.[1] Petitioner, Rex R. Sprietsma, Administrator of the Estate of Jean Sprietsma ("Petitioner"), and Respondent have consented, in writing, to the filing of this brief. The MLA has filed the parties' written consents with the Clerk of this Court pursuant to Rule 37.3 of this Court.

NATURE OF THE MLA'S INTEREST

The MLA is a national bar association that was founded in 1899. The MLA's membership includes more than 3,200 lawyers, law professors, judges, and others whose professions and interests involve maritime affairs. The attorney members of the MLA, most of whom are specialists in maritime law, represent all maritime interests, including shipowners, charterers, cargo interests, port authorities, seaman, longshoremen, passengers, underwriters, manufacturers, and other maritime claimants and defendants.

The Articles of Incorporation of the MLA define its purpose as follows:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, to

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[1] In accordance with Rule 37.6 of the Supreme Court of the United States, no counsel for any of the parties authored this brief in whole or in part. Likewise, no person or entity, other than the MLA, its members, and its counsel, made a monetary contribution to the preparation or submission of this brief.

> furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices of different nations.

In 1975, the MLA passed a resolution asserting that the MLA "considers it of the utmost importance and in the public interest that maritime law be uniform to the maximum extent possible throughout the United States." A subsequent MLA resolution, in 1986, reaffirmed its "support of the importance of maintaining national uniformity in maritime law."

To further these objectives, the MLA has appeared as an *amicus curiae* before this Court, on a number of occasions, to argue in favor of uniformity in the substance and application of maritime law.[2] The MLA has also sponsored a wide-range of legislation dealing with maritime matters[3] and has cooperated with congressional committees in the formulation of other maritime legislation.[4] Similarly, the MLA has

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[2] *E.g.*, *United States v. Locke*, 529 U.S. 89 (2000); *Yamaha Motor Corp., U.S.A. v. Calhoun*, 515 U.S. 1186 (1996); *American Dredging Co. v. Miller*, 510 U.S. 443 (1994); *Sisson v. Ruby*, 497 U.S. 358 (1990); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).

[3] *E.g.*, Carriage of Goods by Sea Act, 46 U.S.C. §§ 1300-1315, Death on the High Seas Act, 46 U.S.C. §§ 761-68, Federal Arbitration Act, 9 U.S.C. §§ 1-16, Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-11, and Jones Act, 46 U.S.C. App. § 688.

[4] *E.g.*, Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251-1367; Convention of the International Regulations to Prevent Collisions at Sea, 28 U.S.T. 3459, *as amended*, T.I.A.S. 10672; United States Inland Navigation Rules, 33 U.S.C. §§ 2001-73.

assisted with international maritime projects undertaken by the United Nations, the International Maritime Organization, and the Comité Maritime International.

In particular, the MLA has been keenly interested and involved in the area of recreational boating with its increasing popularity and inclusion within admiralty jurisdiction. The MLA includes a Committee on Recreational Boating, which considers issues arising from the increasing presence of pleasure craft on this country's waters as well as the impact of legislation and judicial decisions concerning recreational boating on other areas of maritime law. The MLA has a strong interest in this case because it concerns whether maritime products liability law recognizes a cause of action for a manufacturer's decision not to install a propeller guard on a recreational boat motor.

SUMMARY OF ARGUMENT

This case lies at the intersection of two important principles of uniformity. In enacting the Federal Boat Safety Act (the "FBSA"), Congress expressed a clear intent to establish uniform national safety standards governing recreational boats and associated equipment. Similarly, to ensure the uniformity of rules governing maritime navigation and conduct, this Court held that admiralty jurisdiction extends to recreational boating accidents in *Foremost Insurance Co. v. Richardson*. In doing so, this Court made the general maritime law applicable to such cases, including the doctrine of maritime products liability established in *East River S.S. Corp. v. Transamerica Delaval, Inc.* Federal maritime law, as embodied in the FBSA and general maritime law, does not recognize Petitioner's propeller guard claim in light of the affirmative decision of the Coast Guard not to require propeller guards on recreational boat motors.

ARGUMENT

I. PETITIONER HAS NO STATE COMMON-LAW CLAIM BECAUSE MARITIME PRODUCTS LIABILITY LAW GOVERNS THIS CASE.

A. Propeller Guard Claims, Such as Petitioner's, Fall Within the Ambit of Admiralty and Maritime Jurisdiction.

Throughout this litigation, Petitioner has ignored that his claim falls within the ambit of admiralty and maritime jurisdiction. Surprisingly, Petitioner's *amici* disagree as to whether his propeller guard claim is subject to admiralty jurisdiction. *Compare* Brief *Amici Curiae* of the States of Missouri, *et al.* ("States Br.") at 4, 12-13 *and* Amicus Curiae Brief of The Association of Trial Lawyers of America in Supp. of Pet'r ("ATLA Br.") at 22. The existence of admiralty jurisdiction should not, however, be lightly ignored because it bears significantly on the issues before this Court.

Maritime tort jurisdiction exists over claims that involve both a maritime "locus" and "nexus." *Jerome B. Grubart v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). The maritime locus requirement is satisfied generally where the alleged tort occurred on navigable waters. The maritime nexus requirement is satisfied where: (1) the type of incident at issue poses "a potentially disruptive impact on maritime commerce" and (2) the "general character" of the "activity giving rise to the incident" bears a "substantial relationship to traditional maritime activity." *Id.*; *Sisson v. Ruby*, 497 U.S. 358, 363-67 (1990).

Importantly, this Court has repeatedly recognized, in the interest of uniformity, that admiralty jurisdiction extends to accidents involving recreational boats. *See, e.g., Sisson*, 497 U.S. at 363-67 (applying maritime jurisdiction to a fire aboard a noncommercial vessel in a marina); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674-77 (1982) (applying

admiralty jurisdiction to a collision between two noncommercial vessels). The application of admiralty jurisdiction to recreational boating accidents is thus now well established. Accordingly, in its most recent opinion concerning recreational boating, this Court summarily concluded that "[b]ecause this case involves a watercraft collision on navigable waters, it falls within admiralty's domain." *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 206 (1996). Like the present case, *Calhoun* also involved a products liability claim against a recreational boating manufacturer. *See id.* at 202.

Petitioner's claim similarly satisfies the Court's test for admiralty jurisdiction. First, the accident at issue occurred on the navigable waters of Dale Hollow Lake.[5] J.A. 101. In *Finneseth v. Carter*, a case involving a collision between two pleasure craft, the Sixth Circuit Court of Appeals expressly determined that "Dale Hollow Lake is an interstate water body susceptible or capable of being used as an interstate highway of commerce" and "it meets the Supreme Court's requirements for navigability for admiralty jurisdiction . . . ." 712 F.2d 1041, 1047 (6th Cir. 1983).

Second, the type of maritime incident at issue poses a potentially disruptive impact on maritime commerce. This inquiry requires a court to "assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity." *Sisson*, 497 U.S. at 363. Accidents involving collisions and allisions on

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[5] Dale Hollow Lake is an interstate lake covering 27,700 surface acres of water, 620-miles of shoreline, and portions of six counties in Tennessee and Kentucky. *See* <http://www.orn.usa.:e.army.mil/op/DAL/rec> (visited May 7, 2002). Fourteen commercial marinas on the lake provide a variety of services to millions of visitors every year, including small vessel and houseboat rental, restaurants, moorage, and lodging. *Id.*; *see also* <http://www.dalehollow-lake.net> (visited May 7, 2002). A map of Dale Hollow Lake is attached to this Brief as an Appendix.

navigable waters, such as here, especially when coupled with maritime law's traditional concern for navigation satisfy this test. *Foremost*, 457 U.S. at 675.

Third, the general conduct involved in this case bears a substantial relationship to traditional maritime activity. The proper inquiry is "whether the tortfeasor's activity, commercial or noncommercial, on navigable waters is so closely related to activity traditionally subject to admiralty law that the reasons for applying special admiralty rules would apply in the suit at hand." *Grubart*, 513 U.S. at 539-40. This case concerns the safety and operation of a recreational boat on navigable waters, which this Court has recognized "clearly falls within the substantial relationship." *Id.* at 540 (*citing Foremost*, 457 U.S. at 675). Therefore, Petitioner's claim falls squarely within admiralty jurisdiction.[6]

B. Maritime Products Liability Law Governs Defective Design Claims Involving Recreational Boats and Associated Equipment.

This jurisdictional analysis cannot be ignored because it provides the necessary first step in determining what law governs Petitioner's claim. As this Court has held, "[w]ith admiralty jurisdiction comes the application of substantive admiralty law." *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864 (1986). Substantive admiralty law applies to suits subject to a court's admiralty jurisdiction whether the plaintiff files the suit in federal or, as in this case, state court. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222-23 (1986). Under the "Savings to Suitors" Clause, state courts have jurisdiction to consider *in personam* maritime claims, but federal maritime standards govern a plaintiff's substantive legal rights. *Id.* at 222-23. That is, the

[6] *See Calhoun v. Yamaha Motor Corp., U.S.A.*, 216 F.3d 338, 345 (3d Cir.) (finding admiralty jurisdiction on remand), *cert. denied*, 531 U.S. 1037 (2000).

so-called "reverse-*Erie*" doctrine limits "the extent to which state law may be used to remedy maritime injuries." *Id.*; *accord* ATLA Br. at 27.

In recent cases, this Court has suggested, however, that the *East River* maxim is not iron clad, that is, "federal admiralty jurisdiction does not result in automatic displacement of state law." *Grubart*, 513 U.S. at 545; *see also Calhoun*, 516 U.S. at 206 (addressing remedies available to parents of recreational boater killed in state territorial waters); *American Dredging Co. v. Miller*, 510 U.S. 443, 452 (1994) (considering federal displacement of state *forum-non-conveniens* law). Unlike the present case, these cases did not address whether federal or state *liability* standards governed a plaintiff's maritime claim. *See, e.g., Calhoun*, 516 U.S. at 215 n.13 (declining to decide law governing liability in maritime design defect case). If this Court's statement in *East River* is to have any meaning, however, federal maritime law must apply to Petitioner's products liability claim.[7]

Indeed, this Court's holding in *East River*—although ignored by Petitioner—itself demonstrates the applicability of substantive maritime law to his products liability claims. In *East River*, the Court recognized, for the first time, the doctrine of "products liability, including strict liability, as a part of the general maritime law." 477 U.S. at 865. *East River* thereby created a field of maritime products liability law as a part of the general maritime law. Robert Force, *An Essay on Federal Common Law and Admiralty*, 43 ST. LOUIS U. L.J. 1367, 1373 (1999) ("Force, *Common Law*").

Importantly, the *East River* Court did not simply adopt state law or leave the resolution of products liability claims,

[7] As the authors of a leading treatise have observed, "[i]f there is any sense at all in making maritime law a federal subject, then there must be some limit set to the power of the states to interfere in the field of its working." GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY § 1-17 at 48 (2d ed. 1975) ("GILMORE & BLACK").

in maritime cases, to state law. The Court could, of course, have easily done so because, at the time of its decision, the overwhelming majority of states had adopted some form of products liability law. *See Pan-Alaska Fisheries, Inc. v. Marine Constr. & Design Co.*, 565 F.2d 1129, 1134 & n.2 (9th Cir. 1977) (noting the prevalence of state strict products liability law). Moreover, this Court had previously chosen to apply state law, in maritime cases, in the absence of a congressionally or judicially established maritime rule. *See, e.g., Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 320-21 (1955); *see also Miller*, 510 U.S. at 451-52.

Nevertheless, the Court decided, instead, to "fashion" a federal admiralty rule and, in doing so, created a body of maritime products liability law. The creation of federal maritime products liability law reflects the need for uniform standards for vessel and equipment design in light of their inherently mobile nature. This maritime products liability law, along with the FBSA, 46 U.S.C. §§ 4301-11, governs Petitioner's propeller guard claim—not Illinois law. *Cf.* ATLA Br. at 22, 27. As demonstrated below, federal maritime law does not recognize such a design defect claim.

C. Maritime Law Does Not Recognize a Design Defect Claim for a Manufacturer's Decision Not to Install a Propeller Guard.

In light of *East River*, this Court must look to federal maritime law, not Illinois law, to determine whether Petitioner may maintain a design defect claim for the lack of a propeller guard on a recreational boat motor. Two sources of law comprise federal maritime law: congressional legislation and general maritime law.[8] GILMORE & BLACK § 1-17 at 47; Force, *Common Law* at 1370. Where Congress

[8]The "general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules" taken from federal and state sources. *East River*, 476 U.S. at 864.

has enacted maritime legislation, it supplies the applicable substantive maritime rules. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 27 (1990); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978). "Absent a relevant statute, the general maritime law, as developed by the judiciary, applies." *East River*, 476 U.S. at 864.

The relevant statute, here, is the FBSA and the related regulations issued by the United States Coast Guard (the "Coast Guard"). The FBSA and Coast Guard regulations do not directly answer the question before this Court. The FBSA is silent on propeller guards. The Coast Guard affirmatively decided not to promulgate a regulation requiring them.

This Court has recently held, nevertheless, that, in developing general maritime law, courts must accord great deference to related federal legislation and the limits imposed by Congress. *See Miles*, 498 U.S. at 27 ("we must also keep strictly within the limits imposed by Congress . . ., and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation."). Federal legislation, such as the FBSA, represents the courts' "primary guide" in defining the general maritime law in congressionally regulated areas "both because of the interest in uniformity and because Congress' considered judgment has great force in its own right." *Higginbotham*, 436 U.S. at 624; *see also Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 176 (1978) (same). The FBSA, its legislative history, and the Coast Guard's regulatory activity do not support recognition of propeller guard claims under federal maritime law.

Congress enacted the FBSA in 1971 "to improve boating safety by requiring manufacturers to provide safer boats and boating equipment to the public through compliance with safety standards to be promulgated by the Secretary of the Department in which the Coast Guard is operating . . . ." SEN. REP. NO. 92-248, 92d Cong., 1st Sess. 6 (1971) ("SEN. REP."). Congress intended the FBSA to be a "comprehensive

piece of legislation." H.R. REP. NO. 92-324, 92d Cong., 1st Sess. 10 (1971) ("H.R. REP."). Among its key provisions, the FBSA authorized the Coast Guard, to which rule-making authority was delegated, to establish "minimum safety standards for recreational vessels and associated equipment." 46 U.S.C. § 4302(a)(1).

In authorizing the Coast Guard to promulgate safety standards for associated equipment, such as recreational boat motors, Congress sought to foster the "establishment of *national* construction and performance standards." SEN. REP. at 15 (emphasis added). Congress recognized that the "need for *uniformity in standards* if interstate commerce is not to be unduly impeded supports the establishment of *uniform construction and equipment standards* at the Federal level." *Id.* at 14 (emphasis added). Congress intended the Coast Guard's safety standards to "preempt[] the field of boating standards or regulations." H.R. REP. at 11; *see also* 46 U.S.C. § 4306. Therefore, the Coast Guard's safety standards apply not only to all recreational boats and associated equipment on navigable waters but also to all boats or equipment introduced into interstate commerce.[9] 46 U.S.C. §§ 4301, 4307.

The FBSA empowers the Coast Guard, however, only to promulgate standards necessary "to avoid a substantial risk of

[9] The legislative history conclusively shows Congress's intent. *See, e.g.*, SEN. REP. at 17 ("Applicability of the sections dealing with safety standards is extended to 'boats' that move in interstate commerce. This is intended to assure that virtually all boats are manufactured in compliance with federal safety standards whether or not they will be operated within the federal maritime jurisdiction."); H.R. REP. at 13 (same); *Recreational Boat Safety: Hearings on H.R. 15041, H.R. 15140 Before the Subcomm. on Coast Guard, Coast and Geodetic Survey, and Navigation of the House Comm. on Merchant Marine and Fisheries*, 91st Cong., 2d Sess. 36 ("H.R. Hearing") ("This subsection utilizes interstate commerce as the constitutional basis to extend the applicability of those sections of the Act pertaining generally to boat safety standards to certain boats in addition to those used on waters subject generally to Federal jurisdiction.").

personal injury to the public" and "appropriate in relation to the degree of hazard that the compliance will correct." *Id.* § 4302(c)(3). The Coast Guard testified, at the FBSA hearings, that it would promulgate regulations only where necessary to insure the manufacture of reasonably safe and reliable boats and equipment. *National Boating Safety Program: Hearing on S. 696 Before the Merchant Marine Subcomm. of the Senate Comm. on Commerce*, 92d Cong., 1st Sess. 45, 54, 55 ("Sen. Hearing"); H.R. Hearing at 79. In prescribing such regulations, the Coast Guard must (1) consider whether a regulation will contribute to recreational vessel safety, (2) evaluate relevant recreational vessel safety standards, statistics, and data, and (3) consult with the National Boating Safety Advisory Council ("NBSAC"). *Id.* § 4302(c).

In the context of this legislative and administrative scheme, the Coast Guard considered, in 1988, whether to promulgate a safety standard requiring propeller guards. The Coast Guard initially instructed the NBSAC to study the feasibility and potential safety advantages and disadvantages of propeller guards. The NBSAC appointed a Propeller Guard Subcommittee (the "Subcommittee") and directed it to assess "the arguments for and against some form of mechanical guard to protect against propeller strikes" and consider whether "the Coast Guard [should] move towards a federal requirement for some form of propeller guard."[10] J.A. 43.

Following a year-long study, the Subcommittee recommended that the Coast Guard "take no regulatory action to require propeller guards."[11] J.A. 40. The Subcommittee

[10] The Subcommittee included a Coast Guard representative as well as state, industry, and public members. J.A. 71.

[11] The Subcommittee conducted field tests of various types of propeller guards, heard testimony and received reports from designers, manufacturers, plaintiff attorneys, naval architects, a former Coast Guard engineer, propeller guard advocates, and physicians, and reviewed numerous documents, video tapes, and other visual materials. J.A. 13-17,

based this recommendation on several findings. First, the Subcommittee concluded that propeller guards significantly increased the underwater profile of recreational boats, thereby magnifying the possibility of blunt trauma injuries. J.A. 36. Some propeller guards were also found to pose a risk of catching body appendages in the guards and holding them against the propellers. *Id.* Second, the Subcommittee determined that, at normal operating speeds, propeller guards interfered with the boats' steering and control. J.A. 31-32, 37. Finally, the Subcommittee found that "[n]o simple universal design suitable for all boats and motors in existence ha[d] been described or demonstrated to be technologically or economically feasible." J.A. 38.

The Subcommittee presented its report to the NBSAC, which unanimously adopted its recommendations. J.A. 74-79. The NBSAC referred the report to the Coast Guard. The Coast Guard reviewed the Subcommittee's report and adopted all of its recommendations, including its recommendation to take no regulatory action to require propeller guards. J.A. 80. The Coast Guard noted, *inter alia*, that "[a]vailable propeller guard accident data do not support imposition of a regulation requiring propeller guards on motorboats." *Id.* The Coast Guard's affirmative decision not to require propeller guards evidences the agency's determination that such a requirement would not "contribute to recreational vessel safety." [12] 46 U.S.C. § 4302(c)(1).

49-56. Based upon this study, the Subcommittee drafted a report to the NBSAC, which the Subcommittee unanimously approved. J.A. 14.

[12] The Coast Guard has promulgated regulations under the FBSA where it has determined that the regulations would contribute to recreational vessel safety. The Coast Guard has issued regulations governing "design and construction of recreational boats," including "manufacturer certification, identification of boats, display of capacity information, safe loading, safe powering, flotation, electrical systems, fuel systems, ventilation, start-in-gear protection, navigation lights, and backfire flame control." <http://www.uscgboating.com/reg> (visited May 9, 2002); *see also* 33 C.F.R. Pts. 173-75, 177, 179, 181, 183 (2000).

In light of the FBSA's legislative history and the Coast Guard's affirmative decision not to impose a propeller guard requirement, this Court should not recognize Petitioner's propeller guard claim under federal maritime law. *See* James W. Bartlett, III, *Recreational Boats: The Evolution of Jurisdiction and Choice-of-Law Issues from the Constitution Through the Calhoun Decision*, 75 TUL. L. REV. 1247, 1293-94 (2001). Congress has established a comprehensive scheme for identifying and promulgating necessary safety standards, leaving the ultimate decision to the Coast Guard. This case is not one of "inaction" by the Coast Guard. Rather, the Coast Guard "studied . . . and affirmatively decided as a substantive matter that it was not appropriate to impose a requirement." *Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598, 615 (5th Cir. 2000), *cert. denied*, 532 U.S. 941 (2001). Thus, courts should defer to the statutory scheme devised by Congress in the FBSA in developing standards of conduct and safety under the general maritime law.[13]

It is inconceivable that Congress intended for courts or juries to establish their own safety standards under the guise of general maritime law as Petitioner's *amicus* ATLA suggests.[14] *See* ATLA Br. at 28. Permitting courts to do so

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[13] The lower federal courts often look to Coast Guard regulations, or the absence of a regulation, in determining liability in maritime cases. *See, e.g., Jackson v. OMI Corp.*, 245 F.3d 525, 528 (5th Cir. 2001) (finding vessel was not unseaworthy where the "design of the doorway in question was dictated by federal regulations"); *Jussila v. M/T Louisiana Brimstone*, 691 F.2d 217, 219 (5th Cir. 1982) (noting that no Coast Guard regulation required different color for metal rim on which plaintiff tripped).

[14] It would be naive to suggest that jury verdicts in products liability cases do not establish "standards" to which manufacturers are forced to adhere. *See Geier v. American Honda Motor Co.*, 529 U.S. 861, 882

would not only undermine Congress's clear intent but would also greatly harm the uniformity of maritime law, thereby producing significant practical problems for manufacturers and boat operators. *See infra* at III. The general maritime law should especially not be extended to include Petitioner's propeller guard claim when almost every court to have considered similar cases—both federal *and* state—has refused to recognize such claims although for different reasons.[15]

II. THE FBSA PREEMPTS PETITIONER'S PROPELLER GUARD CLAIM.

Even if this Court considers this case under the preemption analysis applied by the Supreme Court of Illinois, it should still affirm the court's holding. The MLA leaves to other parties consideration of the type of preemption that applies to this case but addresses two issues that bear directly upon this issue: the supposed presumption against preemption and the FBSA's "savings" clause. Indeed, this Court has recognized that "the categories of preemption are not 'rigidly distinct.'"

(2000); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 509 (1996) (O'Connor, J., concurring and dissenting); *see also* ROBERT FORCE, *U.S. Tort Law Problems, in* UNITED STATES SHIPPING POLICIES AND THE WORLD MARKET 191, 212-14 (William A. Lovett ed., 1996).

[15] *See, e.g., Lady, supra*; *Lewis v. Brunswick Corp.*, 107 F.3d 1494, 1505-06 (11th Cir. 1997), *cert. dismissed*, 523 U.S. 113 (1998); *Carstensen v. Brunswick Corp.*, 49 F.3d 430, 431-32 (8th Cir.), *cert. denied*, 516 U.S. 866 (1995); *Moss v. Outboard Marine Corp.*, 915 F. Supp. 183, 186 (E.D. Cal. 1996); *Davis v. Brunswick Corp.*, 854 F. Supp. 1574, 1580 (N.D. Ga. 1993); *Shield v. Bayliner Marine Corp.*, 822 F. Supp. 81, 83 (D. Conn. 1993); *Shields v. Outboard Marine Corp.*, 776 F. Supp. 1579, 1581 (M.D. Ga. 1991); *Mowery v. Mercury Marine, Div. of Brunswick Corp.*, 773 F. Supp. 1012 (N.D. Ohio 1991); *Ryan v. Brunswick Corp.*, 557 N.W.2d 541, 548-49 (Mich. 1997); *Fitzpatrick v. Madonna*, 623 A.2d 322 (Pa. Super. Ct. 1993); *Veal v. Teleflex, Inc.*, 586 So.2d 188 (Ala. 1991); *but see Ard v. Jensen*, 996 S.W.2d 594, 599-600 (Mo. Ct. App. 1999); *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 250-51 (Tex.), *cert. denied*, 513 U.S. 1057 (1994).

Crosby v. National Foreign Trade Council, 530 U.S. 363, 373 n.6 (2000) (*quoting English v. General Elec. Co.*, 496 U.S. 72, 79 n.5 (1990)). Regardless, under whatever preemption analysis applies, Congress plainly intended the FBSA to invest the Coast Guard with the sole authority to promulgate safety standards and, therefore, to preempt any other entity—whether legislative, administrative, or judicial—from doing so. *See Medtronic*, 518 U.S. at 485-86 ("any understanding of the scope of a pre-emption statute must rest primarily on 'a fair understanding of *congressional purpose*.'") (citation omitted).

A. No Presumption Against Preemption Exists Because Petitioner's Claim Affects National Maritime Commerce.

Petitioner begins his preemption analysis by arguing that a strong "presumption against preemption" governs his case. Pet'r Br. at 16; *see also* States Br. at 5-7. Petitioner is incorrect. As this Court recognized recently in *United States v. Locke*, no presumption against preemption exists where the state laws in question "bear upon *national* and international *maritime commerce*." 529 U.S. 89, 108 (2000) (emphasis added). The regulation of maritime commerce is a matter in "which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Ray*, 435 U.S. at 157. Contrary to Petitioner's suggestion, the Court's reasoning in *Locke* applies equally to his case. *See* Pet'r Br. at 17-21.

First, the federal government has historically regulated non-commercial vessels as well as commercial vessels. Petitioner's *amicus* the Solicitor General concedes that "[f]or most of the last century, Congress sought to promote the safe use of motorboats through various statutory requirements." Brief for the United States as Amicus Curiae Supporting Petitioner ("U.S. Br.") at 1. As early as 1910, Congress enacted the Motor Boat Regulations Act, 46 U.S.C. § 511 *et*

seq. The act covered "'every vessel propelled by machinery and not more than sixty-five feet in length except tugboats and towboats propelled by steam.'" *Kelly v. Washington*, 302 U.S. 1, 5 (1937) (*quoting* § 1 of the act). Among its provisions, the 1910 act established safety equipment requirements for all motor boats covered by the act.[16] *Id.*

Congress expanded the scope of this act in enacting The Motorboat Act of 1940, 54 Stat. 165, 46 U.S.C. § 526a-t. The 1940 act imposed equipment and design requirements on motorboats and established penalties for the negligent or reckless operation of motorboats. H.R. REP. at 37-41 (reproducing the act). Thereafter, Congress enacted The Federal Boating Act of 1958, 72 Stat. 1754, 46 U.S.C. § 527a-h. The 1958 act created a numbering system for certain undocumented vessels, amended provisions of the 1940 act concerning the reckless or negligent operation of motorboats, and otherwise sought to "encourage uniformity of boating laws, rules, and regulations . . . ." H.R. REP. at 46 (reproducing the act).

Most recently, Congress legislated in the field of recreational boating by passing the FBSA. *See supra* at 9-11. Thus, Congress has actively regulated non-commercial vessels for nearly a century, expanding the scope of its regulation, as necessary, to address the expansion of recreational boating. This regulation represents just one component of Congress's historical regulation of maritime commerce, considered more broadly in *Ray* and *Locke*.

[16] Addressing the act's preemptive scope, the *Kelly* Court observed that "[i]f, however, the state goes further and attempts to impose particular standards as to structure, design, equipment, and operation, which in the judgment of its authorities may be desirable, but pass beyond what is plainly essential to safety and seaworthiness, the state will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule." 302 U.S. at 15.

Second, the fact that the FBSA may not affect *international* commerce is irrelevant because it directly affects *national* maritime commerce. For example, the Coast Guard's regulations govern boats that may be leased, rented, or moored at commercial marinas. As expressly required by the admiralty jurisdiction test, recreational boating safety standards may have a direct effect on commercial shipping as recreational boating accidents can disrupt *all* maritime traffic on busy waterways, including commercial traffic. Moreover, Congress intended the Coast Guard's safety standards to apply to all recreational boats manufactured, sold, or delivered into interstate commerce. 46 U.S.C. § 4307; *see also supra* note 9. Therefore, the safety standards at issue derive from the federal government's historical regulation of maritime *and* interstate commerce.

Third, this Court's own precedents establish that the field of recreational boating products liability law is not subject to state police powers. In *Foremost*, this Court recognized that admiralty jurisdiction extends to recreational boating accidents. 457 U.S. at 674-77. Subsequently, in *East River*, this Court created the field of maritime products law, which applies equally to recreational and commercial vessels. 476 U.S. at 865. *Foremost* and *East River* removed the types of recreational boating claims at issue in this case from state police powers to the extent state police powers ever properly regulated them. If Petitioner is entitled to tort compensation, he must obtain it under federal law.

Lastly, this case does not involve a situation that calls for the balancing of federal and state interests or the accommodation of state law by federal maritime law. *See* Pet'r Br. at 20-21. This case involves, instead, important national interests. Congress recognized these interests in applying safety standards under the FBSA to all recreational boats manufactured or sold into interstate commerce. Where, as here, Congress acts in an area affecting maritime commerce, the national interest in applying federal maritime law

is particularly strong and should prevail. *See* Robert Force, *Choice of Law in Admiralty Cases: "National Interests" and the Admiralty Clause*, 75 TUL. L. REV. 1421, 1473-75, 1481-86 (2001) (Force, *Choice of Law*). Similarly, this Court recognized the importance of uniformity in the field of maritime products liability in *East River*.

B. The FBSA's Savings Clause Does Not Preserve Petitioner's Propeller Guard Claim

The FBSA provides that "[c]ompliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law." 46 U.S.C. § 4311(g). Petitioner contends that this "savings" clause expressly preserves his state common-law products liability claim. *See* Pet'r Br. at 28-32. This reading of § 4311(g) is overly broad and conflicts markedly with the FBSA and Congress' stated intent in enacting it.

In *Tallentire*, this Court identified the relevant considerations for evaluating the scope of a savings clause in maritime legislation, such as the FBSA. The Court considered whether the Death on the High Seas Act ("DOHSA"), 46 U.S.C. §§ 761-68, preempted state-law remedies for wrongful death where the death occurred on the high seas. *Tallentire*, 477 U.S. at 209. Under DOHSA's savings clause, the "provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected . . . ." 46 U.S.C. § 767. The Court evaluated this savings clause "in light of the language of the Act as a whole, the legislative history of [the savings clause], the congressional purposes underlying the Act, and the importance of uniformity of admiralty law." *Tallentire*, 477 U.S. at 221.

Unlike here, the "congressional debates [concerning DOHSA]. . . were exceedingly confused and often ill informed." *Id.* at 225. Nevertheless, considering the clause's language and legislative history as well as Congress's intent

to establish a uniform remedy, the Court construed DOHSA's savings clause as a jurisdictional savings clause and not "an endorsement of the application of state wrongful death statutes to the high seas." *Id.* at 231-32. The Court characterized as "incongruous" "the idea that a Congress seeking uniformity in maritime law would intend to allow widely divergent state law wrongful death statutes to be applied on the high seas." *Id.* at 230; *see also Locke*, 529 U.S. at 107.

Section 4311(g) of the FBSA likewise does not bear Petitioner's reading when viewed in light of the *Tallentire* considerations. The FBSA's "Federal preemption" provision states that:

> [A] State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title.

46 U.S.C. § 4306. The FBSA vests the Coast Guard with sole authority for prescribing safety standards. *Id.* §§ 4302(a)(1), 4307(a)(1).

These provisions of the FBSA, when evaluated in light of the legislative history and congressional purposes underlying the FBSA, preclude reading the savings clause to preserve Petitioner's claim. The legislative history of the FBSA expresses Congress's intent to preempt the field of boat and equipment standards in clear and explicit terms:

> [Section 4306] provides for federal preemption in the issuance of boat and equipment safety standards. This conforms to the long history of preemption in maritime

> safety matters and is founded on the need for uniformity applicable to vessels moving in interstate commerce. In this case it also assures that manufacture for the domestic trade will not involve compliance with widely varying local requirements.

SEN. REP. at 20; *see also* H.R. REP. at 11.[17]

Indeed, the Coast Guard itself testified in favor of federal preemption in the course of the Senate and House hearings. Admiral McClelland of the Coast Guard stated that:

> Presently, the Federal Government cannot preempt the boating standards field. It is even possible for States independently to establish safety standards and equipment requirements so varied as to make it difficult for the manufacturer to comply with all of them, and, of course, for the boatman to comply with the law when he moves between jurisdictions. [¶] This legislation will provide a solution to this problem by providing the Coast Guard with preemptive authority.

Sen. Hearing at 45. *See also id.* at 50, 53, 54; H.R. Hearing at 59, 61, 66.

In contrast, the savings clause, which was not a part of the original bill, received relatively little attention and was viewed primarily as a "technical" amendment by its proponents. Sen. Hearing at 88. Regardless, the savings clause was intended merely to insure that compliance with the Coast Guard's standards alone would not insulate a manufacturer from liability. The Coast Guard understood, for example, that the FBSA would not relieve a manufacturer "from liability under the usual tort law concerning negligence or warranties." *Id.* at 66. Construing § 4311(g) more broadly

[17] Testifying in favor of the act, for example, Representative Monagan warned of the urgency of this legislation to prevent the "proliferation of dissimilar [state safety] standards" and observed that "[f]ederal preemption over any law or regulation which establishes boat or associated equipment safety standards is imperative now." H.R. Hearing at 48.

would greatly undermine the uniformity of maritime law and the congressional purposes underlying the FBSA.

Therefore, this Court should read the FBSA's savings clause as not preserving Petitioner's state common-law claim. Taken to its logical conclusion, Petitioner's position reduces to an argument *ad absurdum*. Petitioner contends that the FBSA provides no "basis for exempting any defendant from any common-law liability." Pet'r Br. at 29. If the FBSA imposes *no limits* on common-law actions, then a jury could hold a manufacturer liable for installing equipment, on a recreational boat, *expressly required by the Coast Guard*. Petitioner's position would consequently permit juries to disregard Coast Guard regulations with respect to safety standards. Congress could not have intended juries to establish independent safety standards, having generally denied state legislatures and administrative agencies that right. *Cf. Geier*, 529 U.S. at 869 ("Nothing in the language of the saving clause suggests an intent to save state-law tort actions that conflict with federal regulations.").

Reading § 4306 to preempt Petitioner's propeller guard claim, on the other hand, does not produce similarly absurd results. Indeed, it is more reasonable to view the savings clause as simply ensuring that mere compliance with Coast Guard regulations does not relieve an operator or manufacturer from all liability. *See* Sen. Hearing at 66. Such an interpretation does the least violence to the statutory language and congressional purposes underlying the FBSA while not depriving a plaintiff of a remedy. For example, even if a plaintiff could not bring a propeller guard claim, he could still sue the operator for negligent operation of the boat. A plaintiff could also sue a manufacturer for improperly manufacturing or installing safety equipment. Thus, even if § 4306 preempted Petitioner's propeller guard claim, § 4311(g) would still save "some significant number of common-law liability cases" for victims of recreational boating accidents. *Geier*, 529 U.S. at 868.

The fact that, here, the Coast Guard affirmatively decided *not to promulgate* a regulation, as opposed to issuing one, does not preclude affirmance. In *Ray*, this Court reaffirmed that states may not regulate "where failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute." 435 U.S. at 178 (quotation & citations omitted). The *Ray* Court considered, *inter alia*, whether Washington could ban oil tankers larger than 125,000 DWT from Puget Sound where the Coast Guard had not. *Id.* at 173-78.

The Court recognized that the Coast Guard was authorized to issue such a ban under the Ports and Waterways Safety Act. *Id.* at 174. The Coast Guard had not, however, promulgated any regulation setting a maximum size limit for vessels. Nevertheless, this Court concluded that the Coast Guard had sufficiently addressed the size limitation question by issuing a traffic-control system prohibiting the passage of more than one 70,000 DWT vessel through Rosario Strait at a time and reducing this size limitation during bad weather. *Id.* 174-78. The Coast Guard's affirmative decision not to promulgate a propeller guard requirement, having studied the issue for more than a year, must likewise constitute a sufficient exercise of authority to preclude juries from imposing such a duty on manufacturers.

Lastly, ATLA's contention that the FBSA does not preempt Petitioner's propeller guard claim because it arises under the general maritime law, and not state law, is no more persuasive. ATLA Br. at 28. ATLA fails to consider the FBSA and the Coast Guard's affirmative decision not to require propeller guards on all motors in analyzing the scope of maritime products liability law. As discussed previously, this legislative and administrative history plays an integral role in defining the general maritime law. *See supra* at I(C). Even if the general maritime law would have recognized Petitioner's propeller guard claim in the absence of federal

legislation, the FBSA and the Coast Guard's regulatory activity plainly displaced such a federal common-law claim. *City of Milwaukee v. Illinois*, 451 U.S. 304, 313-17 (1981).

III. THE FBSA AND GENERAL MARITIME LAW REQUIRE UNIFORM SAFETY STANDARDS FOR RECREATIONAL BOATS AND, THUS, BAR PETITIONER'S PROPELLER GUARD CLAIM.

Whether the Court treats this case as presenting a question of federal maritime law or statutory preemption, the Court should be guided by the interests of uniformity. This case lies at the intersection of two important policies of uniformity: Congress's interest in having the FBSA provide uniform safety standards for all recreational boats and federal maritime law's traditional interest in uniformity. Ultimately, both of these interests reflect a *national interest* in uniform safety standards that protect recreational boaters and provide predictability for manufacturers. In this context, the MLA espouses uniformity not for its own sake but because it serves these important national interests.

A. Congress Intended the FBSA to Provide Uniform Federal Safety Standards for Recreational Boats and Associated Equipment.

That Congress intended the FBSA to establish *uniform* national safety standards for recreational boats and associated equipment cannot be doubted. Congress viewed the FBSA as creating a "comprehensive piece of legislation" designed to avoid "piecemeal changes in the Federal statutes relating to boats and boating safety." H.R. REP. at 10. To effectuate its desire for uniform standards, Congress ensured that recreational boats would "be built in accordance with the standards prescribed by one Federal agency"—the Coast Guard. *Id.* at 2. The Coast Guard itself recognized that the FBSA's "Federal preemptive measures [were] necessary to assure uniformity of safety standards." Sen. Hearing at 53.

The FBSA was a response to a practical need for uniformity identified by Congress:

> Unless the Federal Government establishes a uniform minimum safe-boating program, the lack of uniformity between States will pose an increasing burden on the boating public. The mobility of trailered boats, and contiguity of some waters to several States now present serious problems to law-abiding recreational boaters.

H.R. REP. at 29; *see also* Sen. Hearing at 70 (same); H.R. Hearing at 98 (same). Congress understood that uniform standards were necessary because recreational boat manufacturers sold their products throughout the country and the inherently mobile nature of recreational boats meant that an owner might operate his boat in different states. *See* H.R. Hearing at 36 ("The extent of Federal involvement continues to be found in the need for uniformity of law and regulation for a transient boating public as well as in the existing Federal capability."). For these same reasons, Congress extended the FBSA's regulation of safety standards to all recreational boats manufactured or sold into interstate commerce. *See* 46 U.S.C. § 4307(a); SEN. REP. at 14.

Congress was not unmindful, however, that recreational boats operate most often in state waters. Congress expressly permitted states, with the Coast Guard's approval, to regulate "the carrying or use of marine safety articles to meet *uniquely hazardous conditions or circumstances within the State*." 46 U.S.C. § 4306 (emphasis added). This exemption from federal preemption was meant to disrupt national uniformity to the least extent possible. The FBSA reserved the right of disapproval to the Coast Guard "to insure that indiscriminate use of state authority does not seriously impinge on the basic need for uniformity." SEN. REP. at 20; *see also* H.R. REP. at 16 (same).[18] This case involves no such local interest as no

[18] Congress reaffirmed its commitment to federal preemption and the establishment of uniform national safety standards when it later recodified the FBSA. *See* H.R. REP. NO. 98-388, 98th Cong., 1st Sess. 160 (1983), *reprinted in* 1983 U.S.C.C.A.N. 924, 972.

party has suggested that propeller guards are necessary to meet uniquely hazardous *local* conditions.

B. Congress's Policy of Uniformity Reflects the Historical Importance of Uniformity in the Field of Maritime Law.

The centrality of uniformity in the maritime law of this country originates in the Admiralty Clause of the Constitution. *See* U.S. CONST. art. III, § 2. The Framers' decision to place maritime matters under national control was not an "idle one." Lizabeth L. Burrell, *Application of State Law to Maritime Claims: Is There a Better Guide Than Southern Pacific Co. v. Jensen?*, 21 TUL. MAR. L.J. 53, 54 (1996). Rather, the Framers created admiralty jurisdiction, at least in part, to establish a uniform maritime law. Robert Force, *Deconstructing Jensen: Admiralty and Federalism in the Twenty-First Century*, 32 J. MAR. LAW & COMM. 517, 547 (2001) (Force, *Deconstructing Jensen*); David P. Currie, *Federalism and Admiralty: "The Devil's Own Mess,"* 1960 SUP. CT. REV. 158, 163.

The principal of uniformity in maritime law has also been recognized by this Court. For example, in *Jackson v. The Steamship Magnolia*, 61 U.S. 296 (1857), the Court extended the reach of admiralty jurisdiction beyond the tidal waters to the inland waters of the country. In *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1874), this Court found it "unquestionable" that "the Constitution must have referred to a system of [maritime] law coextensive with, and operating uniformly in, the whole country." Subsequently, in *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1916), the Court held that state legislation was invalid "if it contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general

maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." This Court has continued to recognize that, in certain cases, "vindication of maritime policies demanded uniform adherence to a federal rule of decision, with no leeway for variation or supplementation by state law." *Calhoun*, 516 U.S. at 210 (citing cases).

While the Court's holding in *Jensen* has been questioned, uniformity remains "particularly important in the maritime arena." Force, *Common Law* at 1380. Non-uniformity invites inconsistent results capable of subverting the "traditional commercial maritime interests' need for decisional stability." Michael F. Vitt, *Stemming the Tide: Uniformity in Admiralty Law*, 28 U. BALT. L. REV. 423, 444 (1999) ("Vitt, *Stemming the Tide*"). "National rules in the form of the general maritime law may be necessary to subject an industry to a single standard when the imposition of multiple standards would make it commercially burdensome for maritime commerce to operate efficiently." Force, *National Interests* at 1482.

These principles are particularly germane to Petitioner's claim. As Congress recognized in enacting the FBSA, uniform national rules for recreational boat and equipment design and construction are essential. Manufacturers cannot be subjected to different safety standards in each of the fifty states. Petitioner's contention that juries throughout the country should be permitted to set their own safety standards for boat motors would result in "precisely the sort of Balkanization of interstate commercial activity which the Constitution was intended to prevent." *Douglas v. Seacoast Prods., Inc.*, 431 U.S. 265, 286 (1977).

C. This Court's Holdings in *Foremost* and *East River* Underscore the Importance of Uniformity in the Present Case.

This Court's holdings in *Foremost* and *East River* also recognize the importance of uniformity to the present case. *Foremost* held that admiralty jurisdiction extends to recreational boating accidents and thereby applied substantive admiralty law to recreational boating cases. The Court premised its holding, in part, on "the need for uniform rules to govern conduct and liability." *Foremost*, 457 U.S. at 674; *see also id.* at 677. In *East River*, the Court created a body of maritime products liability law applicable to *all* vessels within admiralty jurisdiction—non-commercial as well as commercial vessels. *See supra* at 7-8.

The Court's holding in *Calhoun* is not to the contrary. First, unlike *Calhoun*, this case implicates an act of Congress—the FBSA. *Calhoun*, which addressed the damages available for the death of a nonseafarer in state territorial waters, fell outside of the Jones Act and DOHSA. 516 U.S. at 215. Where Congress enacts comprehensive legislation, such as the FBSA, this Court has held that courts must defer to "the limits imposed by Congress." *Miles*, 498 U.S. at 27; *accord Higginbotham*, 436 U.S. at 623-24.

Second, *Calhoun* involved a question of remedies, not safety standards or liability. Congress intended the FBSA and the Coast Guard's regulations to establish uniform national safety standards. Petitioner seeks, however, to permit juries in every state to create their own standards, that is, to impose diverse duties upon the manufacturers of recreational boat motors. It is simply inconceivable that Congress, having sought to ensure uniformity in safety standards, could have intended to allow state juries to disregard the considered judgment of the Coast Guard in establishing their own divergent standards. *Cf. Tallentire*, 477 U.S. at 230-31.

D. Petitioner's Claim Undermines the National Interest in Uniform Federal Safety Standards as Prescribed by the FBSA and General Maritime Law.

The MLA does not propose that this Court endorse a uniform rule simply for the sake of uniformity. Rather, uniformity is critical here because this case involves important national interests and practical concerns. The approach Petitioner espouses would result in jury chaos, undermining the congressional purposes underlying the FBSA and the general maritime law.

The importance of uniformity is greatest where, as in this case, the development and/or enforcement of a uniform rule would promote a national interest underlying the Admiralty Clause. *See* Force, *Deconstructing Jensen* at 546-47. Here, Congress has supplied the national interest in uniformity in enacting the FBSA. *See id.* at 547-48 ("When Congress legislates in the maritime area, the national interest is determined by the objectives of the legislation."). In the FBSA, Congress created a mechanism for the establishment of uniform national safety standards for recreational boats and associated equipment to be promulgated by the Coast Guard. Relying upon its Commerce Clause powers, Congress also extended this regulatory authority to all recreational boats and associated equipment in interstate commerce.[19]

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[19] Petitioner's *amici* the States are, therefore, wrong when they suggest that maritime commentators would view propeller guard claims as necessarily subject to state common law. States Br. at 15. For example, Professor Young does not question the ability of Congress to enact "maritime legislation" and preempt state law under its Commerce Clause powers as it did with the FBSA. *See* Ernest A. Young, *The Last Brooding Omnipresence: Erie Railroad v. Tompkins and the Unconstitionality of Preemptive Federal Maritime Law*, 43 ST. LOUIS U. L.J. 1349, 1364 (1999). Professor Young recognizes, moreover, that uniformity, where necessary in maritime law, may be achieved, as in other areas of law, through "first, Congress's power to impose uniformity by statute, and, second, the Constitution's prohibition on measures that discriminate against or unduly burden commerce between the states or with other nations." Ernest A. Young, *Preemption at Sea*, 67 GEO. WASH. L. REV. 273, 349 (1999).

The practical need for uniformity underscores the importance of these national interests and evidences why Congress enacted the FBSA. Initially, recreational boat and equipment manufacturers require national construction and design standards because they design and manufacture boats, motors, and other products for sale throughout the country. Manufacturers need uniformity so that they can design their products to meet the applicable standards and not be subject to conflicting standards throughout the country.[20] H.R. Hearing at 373. Indeed, during the FBSA hearings, the Coast Guard testified that state enactment of diverse safety standards was "both a real and potential" problem. *Id.* at 67.

In addition, as the facts of this case reveal, the inherently mobile nature of boats necessitates uniformity. Here, the boat owner was a resident of Illinois, who appears to have purchased the boat and motor at issue in Illinois. J.A. 106. The accident occurred, however, while the boat was being operated on the Dale Hollow Lake in Tennessee. J.A. 107.

Even if the manufacturer knew that a motor would be sold in Illinois, it could not guarantee that it would be used there. Consequently, if juries in Illinois and Tennessee were left to establish their own common-law standards for propeller guards, a manufacturer, might be held to different standards depending upon the state in which it was sued, for example, if Illinois juries found that the failure to install a propeller guard rendered the motor defective but Tennessee juries found that the installation of a propeller guard rendered the motor

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[20] "The reason for such a preemption is to insure that manufacturers building for the entire domestic trade will not find themselves in the unfortunate position of having to comply with varying boat safety standards in different places." H.R. Hearing at 37.

defective. Under Petitioner's argument, two juries in the same state could even reach conflicting views.

Under the FBSA, state legislatures would be powerless to correct inconsistent or erroneous jury verdicts. *See* U.S. Br. at 11. Such non-uniformity prevents a manufacturer from knowing what standards apply to its product, a situation the FBSA was clearly designed to avoid. Congress could not have intended to permit juries to disregard the considered and expert determination of the Coast Guard that propeller guards did not "contribute to recreational vessel safety" especially where it preempted the states and their administrative agencies from doing so. 46 U.S.C. § 4302(c)(1).

This case demonstrates yet another practical problem, requiring uniformity. The lake on which the accident occurred, Dale Hollow Lake, is an interstate lake located in both Tennessee and Kentucky. Recreational boating takes place, in fact, on numerous interstate waters throughout the country, including the Potomac River (District of Columbia, Virginia, and Maryland), Long Island Sound (New York, Connecticut, and Rhode Island), Lake Tahoe (California and Nevada), and Lake Powell (Utah and Arizona). Recreational boaters also use rivers that run through a number of states, such as the Mississippi, Snake, and Colorado.

Therefore, a recreational boater can be in one state at one moment and another state the next. Without uniform standards, a manufacturer's liability would rest solely on the fortuity of where in the course of an afternoon's outing an accident occurred. As this Court reasoned in *Tallentire*, it strains reason to suggest that Congress intended to permit such divergent results in seeking uniform safety standards through the FBSA. *See* 477 U.S. at 230.

CONCLUSION

This Court should affirm the judgment of the Supreme Court of Illinois and preserve the uniformity of maritime law.

Respectfully submitted,

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